their road, and defendants were enjoined from further operation until they paid a certain further amount for permanent damages. Defendants claimed that they had already paid for these under the following circumstances. One Schmarr (formerly the owner of said property) in 1880 brought a corresponding action for the permanent depreciation of the same property by the same company, but before trial, died, leaving a will. Letters testamentary were issued by the Probate Court to the executors appointed by him, who continued the suit and obtained judgment for all losses sustained and to be sustained. The Court instructed the jury that the verdict rendered would be full compensation and bar another suit. Defendants objected claiming that damages should be awarded only for past injuries. The judgment was sustained, however, and the amount paid. Meanwhile the Courts had declared Schmarr's will invalid, and the property was sold at auction to present plaintiff. Did he acquire the easement, already paid for, thereby? Parker J., says: "Only temporary damages should have been awarded to Schmarr, because the appropriation of the easements by defendants being unlawful was, presumably, not permanent (*Pond* v. *R. R.*, 112 N. Y., 186). This award would be a bar to another suit, only when, (1) defendants had acknowledged permanency of the intended use and acquiesced in the increased damages (*Lake* v. *R. R.*, 104 N. Y. 268–293, or (2) if plaintiff had effectually vested the title in the real estate in the trustees, who obtained judgment. In fact he died intestate, the title, all easements and the claim for future damages vested in his heirs at law (*Shepherd* v. *R. R.*, 117 N. Y. 442; *Kernochan* v. *R. R.*, 128 N. Y. 559). Testator's claim for temporary damages, prior to his death, alone descended to his executors (Shepherd case, *supra*; *Griswold* v. *R. R.*, 122 N. Y. 102). The Court did a great injustice to defendants when they allowed the executors a recovery of permanent damages, "but the consequences cannot be shifted to him upon whom has devolved the title to the estate of which Schmarr died seized."

Construction of Deed — Restrictions. — *Field* v. *City of Providence*, 24 Atl. Rep. 143. A recent number of the Atlantic Reporter records a Rhode Island case of some interest, which for some reason has been overlooked since its decision in 1887 and never before printed. It seems that in 1791 a certain John Field conveyed to a number of his townsmen a parcel of land to be used for a burying ground, and for no other purpose; after nearly a century of such use the city of Providence passed an act setting

aside a certain portion of this burying ground as a public park, and thereupon a descendant of the grantor sued the city for his reversionary right to the land. The court, following the precedent laid down in *Rawson* v. *Inhabitants*, 7 Allen 125, held that the grant carried an absolute estate in fee simple with it, and that as the price paid seemed to have been the full value of the land at the time no reversionary interest could be left in the heirs of the grantors, especially as from the deed it would appear that the provision that the land should be used as a burying ground was inserted more in the interest of the grantees than grantor.

Evidence — Communication by Telephone. — *Oskamp* v. *Gadsden*, 52 N. W. Rep. 718, decided by the Supreme Court of Nebraska June 11, 1892, discussed the interesting question of the admissibility of evidence of conversation held over the telephone. Defendant at Schuyler attempted to converse over telephone with plaintiff at Omaha, but owing to condition of atmosphere they were unable to understand each other and the telephone operator at Fremont, an intermediate station, transmitted defendant's message to plaintiffs offering to sell them a quantity of hay, and also repeated to defendant their answer accepting the proposition. It was contended that the testimony of defendant as to what the operator repeated to him as the conversation progressed was irrelevant and hearsay; but the court held that it was admissible on the ground of agency. "The question thus presented is a new one to this court and there are but few decided cases which aid us in our investigation. But upon principle it seems to me that the testimony is competent, and its admission violated no rule of evidence. It was admissible on the ground of agency. The operator at Fremont was the agent of defendant in communicating defendant's message to Haines, and she was also the latter's agent in transmitting or reporting his answer thereto to defendant. The books on evidence, as well as the adjudicated cases, lay down the rule that the statements of an agent within the line of his authority are admissible in evidence against his principal. Likewise it has been held that when a conversation is carried on between persons of different nationalities through an interpreter, the statement made by the latter at the time the conversation occurred as to what was then said by the parties is competent evidence and may be proven by calling persons who were present and heard it." The court cited *People* v. *Ward*, 3 N. Y. Crim. R. 483; *Wolf* v. *Railway Co.*, 97 Mo. 473; *Printing Co.* v. *Stahl*, 23 Mo. App. 451, and *Sullivan* v. *Kuykendall*, 82 Ky. 483, as cases in which